

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA,

v.

BENJAMIN GREEN ROBINSON

The search warrant
is valid on other
grounds.
Case No. 6:19-cr-132-Orl-18DCI

DENIED and SO ORDERED this
16 day of Aug 2019

G. KENDALL SHARP
United States District Judge

AMENDED MOTION TO SUPPRESS EVIDENCE BASED UPON
RECENT DISCOVERY DISCLOSURES

Pursuant to Rule 12(b)(3), Fed. R. Crim. P., the Defendant,
BENJAMIN GREEN ROBINSON, JR., by and through undersigned
counsel, files this *Amended Motion to Suppress Evidence Based Upon Recent
Discovery Disclosures*.¹ On Friday, August 1, 2019 the United States disclosed
to counsel for Mr. Robinson that it was investigating what appeared to be an
essential fact that resulted in this Honorable Court signing off on the initial
search and seizure warrant in this case—a warrant that resulted in the seizure
of the first quantities of cocaine in the case, multiple kilograms, against Mr.
Robinson. On Monday evening, August 5, 2019 the United States confirmed
that it could not substantiate the United States' representation in the
underlying January 20, 2016 application for search warrant—that is, that a
canine alerted to the presence of cocaine in a parcel addressed to 128 Big Ben

¹ Although the reason for the timing of the filing of the instant motion is clear from a review of the matters set forth herein, Mr. Robinson has contemporaneously filed his *Petition for Leave to File Motion to Suppress*. Dkt. 38. Additionally, the motion has been amended to include Exhibits A & B that were inadvertently omitted in the previous filing. There are no substantive changes to the original filed motion.

Drive, Daytona Beach, Florida ("Parcel 1"). Any and all evidence surrounding "Parcel 1," specifically evidence which includes, but is not limited to, the actual existence of the parcel, any names and/or addresses associated with the parcel, any discussion regarding the existence of the parcel, and any fruits derived from the search and seizure of the parcel, should be suppressed and the search warrant invalidated. As grounds Mr. Robinson would further state:

FACTS

On January 16, 2016, after alerting workers at a Daytona Beach, Florida post office facility to intercept certain packages destined for 128 Big Ben Drive, Daytona Beach, Florida, Federal Bureau of Investigation (FBI) Special Agent Robert Corley examined one such package and sought a search and seizure warrant. Four days later, on January 20, 2016, FBI Special Agent Michael Dahl ("SA Dahl") on behalf of the United States applied to the Court for issuance of a search warrant for the intercepted parcel which was addressed to Brian Stein, 128 Big Ben Drive, Daytona Beach, Florida ("Parcel 1").² Special Agent Dahl represented in the affidavit/application that:

"On January 19, 2016, TFA Woell used a trained narcotics detection canine to examine Parcel 1. Gage, a Volusia County Sheriff's Office canine, alerted to the parcel when it was presented to him amongst other items. This alert indicated that Parcel 1 contains controlled substance. The canine did not alert to any other items in the array that were

² See Exhibit A (Application for a Search Warrant).

known not to contain controlled substances. Canine Gage is an approximately five-year old Labrador retriever trained in the detection of dangerous drugs. The drug training consists of over 400 hours of active training. Canine Gage is a National Narcotics Detection Dog Association certified narcotic detection dog and has been previously certified by American Detection Canine Association with numerous successful narcotics finds. Canine Gage is trained in the detection of cannabis/marijuana, cocaine, crack cocaine, heroin, methamphetamine, and MDMA. Task Force Agent Woell is a law enforcement officer with the Volusia County Sheriff's Office assigned to the Volusia Bureau of Investigation. TFA Woell has received numerous hours of training in the field of narcotics investigations, including, but not limited to, an 80[-]hour drug detection canine handler school."

Exhibit A, at pp.0341-0342 (¶¶ 11-13). Based upon the application and accompanying affidavit, U.S. Magistrate Judge David A. Baker authorized the search and seizure of Parcel 1.³ An inventory of the parcel revealed two (2) kilograms of cocaine, each stored in separate GNC Muscle Milk containers.

Indeed, probable cause arises when a drug-trained canine alerts to drugs. *See United States v. Tamari*, 454 F.3d 1259, 1265 (11th Cir. 2006); *United States v. Banks*, 3 F.3d 399 (11th Cir. 1993); *United States v. Dunkley*, 911 F.2d 522 (11th Cir. 1990). However, according to the United States, this past week during its preparation of witnesses for trial TFA Woell informed that as to the January 19, 2016 date represented in Special Agent Dahl's affidavit in support of the underlying search warrant application he (TFA Woell) was in training, and that although he did participate in some surveillance on that date he did

³ See Exhibit B (Search and Seizure Warrant).

not engage in any canine detection activity with regard to Parcel 1, and furthermore if he had so engaged he would have recorded that activity in his records. On this past Friday, August 2, 2019 the United States informed undersigned counsel of the foregoing pertaining to TFA Woell and stated that it would be investigating TFA Woell's records to see if there was a notation that he was engaged in any canine detection activity surrounding Parcel 1. On last evening, August 5, 2019 the United States informed undersigned counsel that there was no record of TFA Woell engaging a canine in detection activities surrounding Parcel 1. Thus, the representation in Special Agent Dahl's affidavit is false. The search warrant was invalid and should not have been issued.

In light of the foregoing, the search and seizure of Parcel 1 was illegal and therefore any and all evidence surrounding Parcel 1, specifically evidence which includes, but is not limited to, the actual existence of the parcel, any names and/or addresses associated with the parcel, any discussion regarding the existence of the parcel, and any fruits derived from the search and seizure of the parcel, should be suppressed. A hearing pursuant to *See Franks v. Delaware*, 438 U.S. 154, 171 (1978) is requested.

CERTIFICATE OF CONFERENCE

Undersigned counsel has contacted the office of opposing counsel, and:

- The Government has no objection to the requested relief.

- The Government objects to the requested relief.
- ✓ Undersigned counsel was unable to speak directly with the attorney assigned to the underlying appeal, and therefore the undersigned is uncertain of the Government's position regarding the requested relief.

WHEREFORE the defendant, BENJAMIN GREEN ROBINSON, JR., requests that this Honorable Court grant the requested relief.

Respectfully submitted this 6th day of August, 2019.

IRVIN LAW FIRM

/s/ Grady C. Irvin, Jr.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of August, 2019, a true and correct copy of the foregoing was provided by electronic (CM/ECF) filing to:
Dana E. Hill, AUSA, U.S. Attorney, 400 W. Washington St., Suite 3100, Orlando, Florida 32801.

IRVIN LAW FIRM

/s/ Grady C. Irvin, Jr.

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